

IN THE
United States
Court of Appeals
FOR THE NINTH CIRCUIT

CARL HARVEY JACKINS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

HONORABLE GEORGE H. BOLDT, *Judge*

BRIEF OF APPELLEE

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BRIEF OF APPELLEE

JURISDICTION

The appellee adopts the statement of jurisdiction set forth in the appellant's brief (Br. 1).¹

¹ References to pages of appellant's brief are designated "Br." References to pages of the record are designated "R." References to Government exhibits are designated "Ex." References to defense exhibits are designated "Def. Ex."

PRELIMINARY STATEMENT

The appellant's brief should be stricken for failure to comply with Rule 18 of the Rules of the United States Court of Appeals for the Ninth Circuit and more particularly subsections (c), (d) and (e) thereof. The appellant has abused the rule of the court requiring the brief to contain a concise abstract or statement of the case, which would present succinctly the questions involved. Further, the appellant has referred to certain specifications of errors, but they are so interwoven and commingled, with references backward and forward in the brief that the arguments are impossible to find and impractical to follow. True the appellant has consumed eighty pages, the maximum under the rules, to present his "argument", but the length of the same has only increased the difficulty rather than relieved it.

The appellee believes that the appellant intended to raise the following points:

1. That the appellant properly claimed the privilege under the Fifth Amendment of the Constitution of the United States in refusing to answer the five questions of which he was found guilty by the court.
2. That in any event no proper foundation was laid by the committee directing the appellant to answer two of the questions.

3. That the five questions were not pertinent, or at least they were not proven to be such by the government.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Title 2, U.S.C. (1948 ed.) Section 192 is set forth in appellant's brief (Br. 2).

The Fifth Amendment to the Constitution of the United States is set forth in appellant's brief (Br. 2).

COUNTER-STATEMENT OF THE CASE

The appellant appeared before the House Un-American Activities Committee on June 14, 1954 at Seattle, Washington. On that day he refused to answer ten questions and was subsequently cited for contempt of Congress. On September 15, 1954 an Indictment was returned against the appellant charging him in ten counts for each question he refused to answer (R. 3).

On March 7, 1955 the appellant waived a jury trial (R. 7) and the case came on for trial before the court on March 14, 1955. Appellant did not take the stand. The court found the appellant guilty of the offenses stated in Counts I, II, VIII, IX and X (R.

Sentence and Order of Probation was signed and filed on March 25, 1955 finding appellant guilty on each of said five counts, and as to each count imposing a fine of \$250 and imprisonment for six months, both fine and imprisonment being concurrent, with the imprisonment suspended and appellant to be placed on probation for 2 years (R. 9). From this Judgment the appellant filed Notice of Appeal on March 25, 1955.

The five counts (I, II, VIII, IX, and X) on which appellant was found guilty were:

COUNT I.

Will you tell the committee please, briefly, what your employment record has been since 1935?

COUNT II.

How were you employed in 1948?

COUNT VIII.

Who are the other people, then, when you used the word "we", that are associated with you in this movement?

COUNT IX.

But what is the name of the group?

COUNT X.

Does the group that you referred to have an office with you in the same office that you work in?

ARGUMENT

POINT I.

Privilege Under the Fifth Amendment of the Constitution of the United States.

(a) *Setting:*

The entire transcript of the proceedings concerning the appellant (Def. Ex. A-4) when called before the committee is set forth in Appendix "A" in this brief.

Appellant claims the committee treated him in a hostile and accusatory fashion (Br. p. 17). This claim, however, is not borne out when the entire proceeding is read as it actually occurred. By pulling a question out of context, the actual setting is distorted. But, be that as it may, a contumacious witness has no right to impugn the motives of the committee or its individual members. *Morford v. United States*, 176 F. 2d 54 (CA DC); *United States v. Orman*, 207 F. 2d 148 (CA 3). The remedy for unseemly conduct, if any, of a Committee of Congress, is a matter for Congress and not for the Courts. *Barsky v. United*

States, 167 F. 2d 241, 250 (CA DC); *Eisler v. United States*, 170 F. 2d 273, 279 (CA DC); *United States v. Orman*, *supra*.

Appellant claims to have been submitted to an opprobrium before a wide television and radio audience (Br. 18). However, appellant made no complaint concerning this and the one complaint he did make that in any way relates to this subject was taken care of as shown in Appendix "A", pp. 18, 19. Therefore, the case of *United States v. Kleinman*, 107 F. Supp. 407 (DC DC) which appellant cites is not in point because in the *Kleinman* case the witness at the outset of the hearing complained of the presence of television and newsreel cameras. That was not the case here, for this point was raised for the first time during the trial before the District Court. In *United States v. Moran*, 194 F. 2d 623 (CA 2), the court held that a hearing before a Congressional Committee where microphones, television cameras and photographers were present, was not so lacking in decorum that it could not be regarded as "a competent tribunal".

The appellant next asserts the defense of "entrapment". This defense, in this type of case, is not only lacking in argument by appellant, as well as reasoning, but, likewise, in case authority.

(b) *Due Process:*

Here appellant suggests the first (Br. 36) of nine (Br. 36, 39, 43, 54, 58, 59, 60, 62, 63) hop, skip and jump routines incorporating by reference, reference back, reference forward, and adopting part of an argument to be made in the future or one already made in the past, in order to present his arguments to this Court. It requires an acrobatic mind well trained in mental gymnastics to follow these requests of appellant and affords little opportunity to the appellee to condense its argument in reply thereto.

Appellant claims he was deprived of his liberty to answer the charges made and to be represented by effective counsel (Br. 36). Actually appellant was given opportunities to answer all the questions propounded during the committee hearing (Appendix "A") and he was in no way deprived of his liberty to answer the charges made against him as is adequately reflected by the record in this case. As to the deprivation of the appellant to be represented by effective counsel, it must be pointed out that appellant was represented by John Caughlan, attorney and member of the Washington State Bar (Appendix "A" p. 18) who was chosen by appellant to represent him. Mr. Caughlan represented several other witnesses before the same committee. This complained of error is without

merit and is now raised for the first time on this appeal.

(c) *Waiver:*

As to Counts VIII, IX and X, appellant asserts that he did not waive his privilege. Let us assume for the moment for the sake of argument that he did not waive his privilege as to those three counts composed of the following questions respectively: *Count VIII*, "Who are the other people, then, when you used the word 'we' that are associated with you in this movement?" *Count IX*, "But what is the name of the group?" *Count X*, "Does the group that you referred to have an office in the same office that you work in?" The "we", "movement", "group" and "office" all refer to a long answer given by the appellant which is found on p. 39 of Appendix "A".

Appellant refused to answer the above questions and gave as his reason, among others, that "I have no choice but to decline to answer the question, invoking my privileges under the fifth amendment not to bear witness against myself" (Appendix "A" p. 40). Nowhere in the record is there a suggestion that an answer to any one of those three questions would furnish a possible link in the chain of evidence to prosecute the appellant for a crime. Counsel for appellant in argument does not even suggest by way of argument

such a possibility. On the contrary, the entire proceedings before the committee, together with the record in this case, negative such a possibility.

Now may we turn to the question that the appellant had waived his privilege. The claim of privilege under the Fifth Amendment is available to a witness only when his answer may tend to incriminate him. Here the appellant gave a long and complete (as far as it went) answer to a question concerning his profession (Appendix "A" p. 39). Obviously appellant intended that the committee hear his answer and hearing it, that they understand it. The questions in Counts VIII, IX and X were propounded for that reason, to understand his long answer. In the setting, this answer was given orally, even when it is reduced to writing it is difficult to understand and the committee had the right as well as the duty, to clear it up on the record. There is nothing suggested that an answer would result in "injurious disclosure". The protection afforded by the fifth amendment is stated in *Hoffman v. United States*. 341 U.S. 479 at page 486:

"But this protection *must* be confined to instances where the witness has *reasonable cause* to apprehend danger from a direct answer. *Mason v. United States*, 244 U.S. 362, 365 (1917) and cases cited." (Italics supplied.)

Appellant argues (Br. 42) that he was frank in

discussing his work, even though his answer was non-relevant. The relevancy of a question is not determined by the answer given but by the question propounded. *United States v. Orman*, 207 F. 2d 148 (CA 3).

When some of the committee members advised the appellant that he had waived his privilege by his long answer, this was done properly. For appellant was asked what his profession was and he gave the fullest details, the committee merely wanted clarification. Had the appellant replied instead that his profession was one of "earning money", then to pry into details and clarification of that answer might very well incriminate.

(d) *Tend to Incriminate; Link in Chain of Evidence:*

Appellant suggests to the court that he wishes to stress the possibility of his being exposed to perjury if his testimony is at variance with the testimony of others (Br. 46). Variable testimony as such is not the basis for perjury charges. Practically every lawsuit, both civil and criminal, has variable testimony. Be that as it may, the appellant does not suggest one instance in this entire record where there is or may be a variance. It may well be suggested here that the trial court let into evidence, because as it announced this case was being tried to the court and not a jury,

every exhibit offered by the appellant from newspaper clippings to appellant's grades in the University of Washington. Nowhere in all these exhibits offered by the appellant and received into evidence is there any reference to variable testimony, or statements reflecting that the appellant was "being exposed to perjury". An answer to the questions asked in the setting in which they were asked, could not possibly have incriminated him. *Marcello v. United States*, 196 F. 2d 437 (CA 5). Neither of the requirements mentioned in *Hoffman v. United States*, *supra*, at page 486:

"To sustain the privilege it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."

are evident here. Even though the appellant repeats this same quotation twice (Br. 52 and 53), its meaning is not changed and there is some little requirement in order to justify the invoking of the privilege. Appellant argues about "link" in the "chain" of evidence (Br. 53), but his argument lacks both link and chain. Chains of argument, like evidence, require "links" and neither can exist without them.

POINT II.

Failure of the Committee to Direct Appellant to Answer Questions After He Had Refused.

Appellant advances this point *only* as to Counts II and VIII (Br. 39) and advances it for the first time on this appeal, never having raised the point in the court below. The Judgment and Sentence in this case is general in its nature in that there is a finding of guilty on all five counts with identical fines and imprisonments, together with suspension and probation on each separate count, all running concurrent and not consecutive with each other. The record does not contain a direction to answer Count II or Count VIII. The cases of *Quinn v. United States*, 349 U.S. 155; *Emspak v. United States*, 349 U.S. 190; *Bart v. United States*, 349 U.S. 219, were decided on May 23, 1955, the Judgment in the instant case was entered on March 25, 1955 (R. 9). Therefore, there existed the opinion of the Circuit Court of Appeals for the District of Columbia which was announced in *Bart v. United States*, 203 F. 2d 45, where no express overruling of an objection by the committee was required and the witness need not be expressly directed to answer the question. The appellant was directed to answer the questions in Counts I, IX and X.

POINT III.

Pertinency of Questions.

The powers and duties of the Committee on Un-American Activities are set forth accurately by the appellant (Br. 62, 63).

Pertinency requires that the questions asked can reasonably be said to be related to the matters covered by the Congressional resolution. *Sinclair v. United States*, 279 U.S. 263. A legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. *Townsend v. United States*, 95 F. 2d 352 (CA DC). The facts called for by the questions in the instant case are so related to the subjects covered by the House Resolution (Ex. 2) as to leave no doubt as to their pertinency. It is the question that must be pertinent. *United States v. Orman*, 207 F. 2d 148 (CA 3). Pertinency in Congressional investigations is necessarily broader than relevancy in the law of evidence. *Bowers v. United States*, 202 F. 2d 447 (CA DC). Also in the *Bowers* case, *supra*, the court stated that if the context of the question is plainly pertinent then the burden is *ipso facto* satisfied.

In determining whether the questions are pertinent to the subject matter under inquiry by the com-

mittee there is actually required a two-step proposition. *First*, the scope of the committee's power must be established. This has been accomplished by the House Resolution in evidence (Ex. 2) and set forth in appellant's brief (Br. 62). *Second*, it must be established that the particular question was pertinent to the subject matter about which the committee was authorized to inquire. The first step has been met (Ex. 2). The second step has been met by reference to Appendix "A". Further satisfaction is found in the record itself. The purpose for calling the appellant as a witness (R. 28) is set forth as follows:

(Direct Testimony of Frank S. Tavenner, Jr.)

Q. Now what was the purpose for calling or the reason for calling the defendant before the Committee?

A. Well, the Committee being engaged in the investigation in which it was engaged had learned that this witness in all probability had facts within his knowledge which would have been of value to the Committee in performing its investigative duties.

The purpose for asking questions found in Counts I and II (R. 30) is set forth as follows:

(Direct Testimony of Frank S. Tavenner, Jr.)

Q. What was the purpose in asking the defendant that particular question?

A. There were several purposes for asking the

question. One was the question of proper identification of the witness. Another question was — another point was this, that the Committee in order to investigate the knowledge which it understood this witness may have regarding communist party activities desired to know his background in the community. That is, how he was employed, what his opportunities for knowledge were in the various fields in which the Committee was interested. Those are the principal things that occur to me now.

The purpose for asking questions found in Counts VIII, IX and X (R. 34) is set forth as follows:

(Direct Testimony of Frank S. Tavenner, Jr.)

Q. Can you state what the purpose for asking that particular question was?

A. That question, and I should have said in regard to the other question what I am proposing to say now, was also for the purpose of ascertaining facts relating to the man's identity and the business in which he was then engaged. So it was for the dual purpose of identifying the witness more definitely and it was also for the purpose of ascertaining what opportunities this witness had of knowing matters regarding which the Committee was interested in and at the moment I don't recall what else Congressman Clardy may have (sic) had in mind. To me that was what was the purpose of the question.

In the *Bowers* case, *supra*, the court stated that pertinency does not depend on the probative value of the answer.

The resolution authorizing the inquiry by this committee does not require the precision needed for a criminal statute. A resolution authorizing an investigation in general terms is sufficient. *Barsky v. United States*, 167 F. 2d 241, 248 (CA DC).

That no proposed legislation is pending or may result from the information requested of the appellant by the questions asked is of no concern in determining pertinency. Actually, the result of such inquiries may be to advise Congress so as to prevent and avoid the enactment of detrimental legislation. *United States v. Dennis*, 72 F. Supp. 417; *United States v. Josephson*, 165 F. 2d 82 (CA 2).

Appellant argues that the committee knew the answer to the question in Count X (Br. 66), therefore the question was not pertinent. The answer, or the lack of one, does not establish the pertinency of the question asked (R. 125, 126). It is the question which must be pertinent, and the refusal to answer, or an innocent true answer does not destroy the pertinency of the question. *United States v. Orman, supra.*

CONCLUSION

Except as to Counts II and VIII, where there was no specific overruling by the committee to the appellant directing him to answer after his refusal, the conviction of the appellant should be affirmed.

Respectfully submitted,

CHARLES P. MORIARTY
United States Attorney

RICHARD D. HARRIS
Assistant United States Attorney
Attorneys for Appellee

APPENDIX "A"

TESTIMONY OF CARL HARVEY JACKINS, ACCOMPANIED
BY COUNSEL, JOHN CAUGHLAN

MR. VELDE. Will you raise your right hand, Mr. Jackins?

In the testimony that you are about to give before this committee, do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. JACKINS. I do.

MR. VELDE. You may be seated.

MR. TAVENNER. Will counsel identify himself for the record, please?

MR. CAUGHLAN. Yes. I am John Caughlan, attorney and member of the Washington State bar. Do you want my address?

MR. TAVENNER. Yes.

MR. CAUGHLAN. 702 Lowman Building, Seattle. Could I make an inquiry?

MR. TAVENNER. Yes.

MR. CAUGHLAN. In case I care to confer with Mr. Jackins or Mr. Jackins cares to confer with me, what is the situation as far as these microphones are concerned? Is our confidential conference going to be broadcast over it?

MR. TAVENNER. I think if you conduct your conversation discreetly it will not be heard on the magnifying system. Otherwise you may move back a little.

Have just been told that if you give a signal it will be cut off completely, so you will be running no risk whatever.

MR. CLARDY. I think, Mr. Chairman, that it would be well to let the record show that the committee

has asked those in charge of the radio and television to cut the volume down if they want to confer.

MR. VELDE. Yes; the record will so show.

Our committee rules, of course, provide that the witness shall have ample opportunity to confer with his counsel in private, and I want to caution those in charge of the broadcast here, both radio and television, that anything that comes out on the air between the counsel and the witness will be certainly objectionable to the committee's procedure.

MR. DOYLE. Mr. Chairman.

MR. VELDE. Mr. Doyle.

MR. DOYLE. May I emphasize this point? I am sure that the committee would agree that if counsel feels that he is not far enough removed from the microphones when he is conferring with his client, the committee would want him to remove himself far enough away from the microphones so that he feels comfortable in his consultation with his client.

MR. VELDE. Certainly, and that permission will be granted. Proceed Mr. Counsel.

MR. TAVENNER. What is your name, please sir?

MR. JACKINS. Harvey Jackins.

MR. TAVENNER. Will you spell your last name, please?

MR. JACKINS. Certainly. J-a-c-k-i-n-s.

MR. TAVENNER. When and where were you born, Mr. Jackins?

MR. JACKINS. I was born June 28, 1916, in northern Idaho.

MR. TAVENNER. Where do you now reside?

MR. JACKINS. In the city of Seattle, sir.

MR. TAVENNER. How long have you lived in the city of Seattle?

MR. JACKINS. A number of years, sir.

MR. TAVENNER. Approximately how long?

MR. JACKINS. Approximately 20.

MR. TAVENNER. Will you tell the committee, please, what your educational training has been, that is, your formal educational training?

MR. JACKINS. I think so. I have been to grade school; I have been to high school; I have been to college.

MR. TAVENNER. How many years have you had in college?

MR. JACKINS. Somewhat less than 4 years.

MR. TAVENNER. At what institution?

MR. JACKINS. At the University of Washington.

MR. TAVENNER. When did you complete your training at the University of Washington, in what year?

MR. JACKINS. I have not completed my training at the University of Washington.

MR. TAVENNER. At what time did you stop your work at the University of Washington?

MR. JACKINS. The last work that I took at the University of Washington, I believe, would be around 1950.

MR. TAVENNER. How many years had you been in attendance at that university immediately prior to 1950? In other words, was there a gap in your attendance at the University of Washington?

MR. JACKINS. Yes.

MR. TAVENNER. Of a period of years?

MR. JACKINS. Yes, there was.

MR. TAVENNER. Will you explain it briefly to us?

MR. JACKINS. Well to the best of my recollection, I took no class work at the University of Washington between the years of 1937, or thereabouts, and around 1950.

MR. TAVENNER. Were you in the Armed Forces at any time between 1937 and 1950?

MR. JACKINS. I would like to confer with counsel, sir.

MR. VELDE. You will have that opportunity.
(At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. VELDE. I can hear you conferring. I would suggest that you move farther back from the microphone.

MR. JACKINS. It is not necessary.

MR. VELDE. All right. Proceed. Answer the question, please.

MR. JACKINS. Would you repeat it?

MR. TAVENNER. Did you serve in the Armed Forces of the United States at any time during the period 1937-50?

MR. JACKINS. I did not.

MR. TAVENNER. Will you tell the committee, please, briefly, what your employment record has been since 1935?

MR. JACKINS. Well, because of the character of this committee and the nature of these hearings, I must decline to answer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness in any attempt on the part of this committee to involve me.

MR. CLARDY. Mr. Chairman.

MR. VELDE. Mr. Clardy.

MR. CLARDY. I ask that he be directed to answer the question.

- MR. VELDE. Certainly. That is a very simple question and the Chair sees no way in which it can incriminate you to answer it whatsoever. You are directed to answer the question.
- MR. JACKINS. What the Chair sees and what might be the facts in the situation are not necessarily the same, Mr. Chairman. I have declined to answer, invoking my privilege under the fifth amendment not to bear witness against myself in any attempt on the part of this committee, considering these circumstances, to involve me.
- MR. VELDE. And upon further consideration, you still invoke the fifth amendment, upon the Chair's direction that you answer the question; is that correct?
- MR. JACKINS. I have been informed by counsel that if I were to give testimony before this committee which would be at variance with witnesses who have appeared before this committee, seeking to curry favor of the committee because of prison sentences hanging over their head, that regardless of the obvious lack of integrity of such witnesses I would still be subjected to possible charges of perjury.
- MR. VELDE. Mr. Witness, the testimony of the previous witness has nothing to do with your testimony.
- MR. JACKINS. It has a great deal to do with the situation.
- MR. VELDE. Will you answer the question? Or do you refuse to answer?
- MR. JACKINS. I have answered very clearly. I decline to answer that question under my privileges guaranteed under the fifth amendment not to bear witness against myself in any attempt on the part of this committee, considering the circumstances, to involve me.

MR. VELDE. And upon direction by the Chair to answer the question as to your previous employment, you still refuse to answer upon the grounds of the fifth amendment; is that correct?

MR. JACKINS. I have answered that very clearly, Mr. Chairman.

MR. VELDE. How do you mean that—that you answered it very clearly? By refusing to answer? Can you tell me of one way in which giving us the benefit of your previous employment can possibly incriminate you?

MR. JACKINS. Under other circumstances, Mr. Chairman, I would be very glad to discuss those questions, with you or with anyone else, but under the conditions of this hearing and the character of this committee I must decline to answer that question as well, invoking my privilege under the fifth amendment not to bear witness against myself.

MR. VELDE. Very well. Proceed.

MR. TAVENNER. How are you now employed, Mr. Jackins?

MR. JACKINS. I am employed as a personal counsellor.

MR. TAVENNER. In what type of business?

MR. JACKINS. In the field of professional personal counseling.

MR. TAVENNER. How long have you been so employed?

(At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. Three and a half years, approximately.

MR. TAVENNER. That would take you back to 1950 or 1951, approximately, would it not?

MR. JACKINS. Approximately.

MR. TAVENNER. How were you employed in 1948?

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, claiming my privilege under the fifth amendment not to bear witness against myself in any attempt to involve me.

MR. TAVENNER. Did you hold an official position in 1948 or at any time prior thereto in Local 46 of the International Brotherhood of Electrical Workers?

MR. JACKINS. Under other circumstances, I would be glad to discuss that, but considering the nature of this committee and the character of these hearings I must decline to answer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness against myself in any attempt to involve me.

MR. VELDE. May I ask the witness this question? Under what other circumstances would you be willing to answer that question?

MR. JACKINS. Under conditions otherwise than before this committee, Mr. Chairman. I would be glad to discuss the entire issue with you publicly.

MR. VELDE. To whom would you give an answer to that question other than to members of this committee?

(At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. Mr. Chairman, I would be glad to discuss these issues with you, say, in public debate, in a public discussion before a friendly—before an audience or before the general public. The actions of this committee in presenting testimony—

MR. SCHERER. Mr. Chairman.

MR. JACKINS. From thoroughly discredited people and people without integrity this morning has

left me with no choice but to decline to answer that.

MR. CLARDY. Regular order, Mr. Chairman.

MR. VELDE. Regular order is ordered.

Would you go under oath before me and discuss this question as to your employment—on any matters involving your connection with the Communist Party?

MR. DOYLE. I think, Mr. Chairman, that he has volunteered—

MR. VELDE. Just a moment, Mr. Doyle.

May I ask if he will answer this question, please?

MR. JACKINS. In your present capacity, Mr. Chairman?

MR. VELDE. Yes; in my present capacity, naturally.

MR. JACKINS. My answer would be the same as I have made.

MR. CLARDY. May I suggest something, Mr. Chairman?

MR. VELDE. The Chair recognizes the gentleman from Michigan.

MR. CLARDY. May I point out that since he has indicated a willingness to answer these questions before other people, he has waived any protection that he might claim under the fifth amendment, and I ask that he be directed to answer that last question.

MR. VELDE. Yes; I think the gentleman from Michigan is absolutely right. You are directed to answer the last question.

MR. CLARDY. Mr. Chairman.

MR. VELDE. Mr. Clardy.

MR. CLARDY. So that the record may be complete at this point I want to make this observation, so that we will not overlook it. When he has stated that

he is willing to answer that question under certain other circumstances or to other people, it is obvious that any claim that there is any protection afforded him by the fifth amendment is false, because if he is willing to state it to others then there can be no possibility of it incriminating him.

MR. VELDE. I am usually entirely in agreement with the gentleman from Michigan, but I believe that he has not stated that he would answer if he were under oath at the present time.

MR. CLARDY. I do believe there is a distinction, Mr. Chairman, and his statement that he is willing to answer it indicates that there can be no incrimination, because if he gives testimony somewhere else under oath or otherwise, he has at least touched upon the subject of which he is now apprehensive—if he has any such apprehension—and that, obviously, removes any possibility of claiming the fifth amendment in good faith. And I am sure that he is not claiming it in good faith but is attempting merely to filibuster and follow the usual Communist Party line.

MR. VELDE. Witness, if we engaged in public debate or if we engaged in a private session, where you came before me personally, would you answer the question that has been put to you about your employment, under oath?

MR. JACKINS. Are you asking that again?

MR. VELDE. Yes. Do you understand the question that has been propounded, Witness?

MR. JACKINS. In the byplay here, I have lost track of where we are. If you would care to present the situation again —

MR. VELDE. You have been directed to answer the question as to whether or not in a session with me, in my capacity, whether it be public or private, you would answer the question as to your previous employment, under oath — the oath, of

course, to be administered by me?

MR. JACKINS. Might I ask you a question? Is a hypothetical question such as that proper at this point?

MR. VELDE. If you will answer that question, instead of refusing to answer under the grounds of the fifth amendment, then perhaps we might consider the question properly.

MR. JACKINS. It seems to me that to give you an answer to that would only be to express an opinion. If it is your desire that I express an opinion about it, I will.

MR. JACKSON. Regular order, Mr. Chairman.

MR. VELDE. Regular order.

MR. JACKSON. It is quite obvious that the witness has no intention of answering any questions which have to do with his alleged membership in the Communist Party, and I think it is a waste of time to pursue it any further. As far as I am concerned you can ask him the question now and excuse him.

MR. VELDE. Very well. The observation of the gentleman from California is very astute and wise. Are you now a member of the Communist Party?

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I decline to answer that question, claiming my privilege under the fifth amendment to the Constitution not to bear witness against myself in any attempt on the part of this committee to involve me.

MR. VELDE. Have you ever been a member of the Communist Party?

MR. JACKINS. Considering again the character of these hearings and the nature of this committee, I decline to answer that question, claiming my privilege under the fifth amendment to the

Constitution not to bear witness against myself in any attempt to involve me.

MR. VELDE. Proceed with your questions, counsel.

MR. TAVENNER. Mr. Chairman, it was my intent to inquire of this witness as to what knowledge he had regarding Communist Party activities in connection with unions of which he was a member or had official positions with, but the witness has refused to answer that he was even a member of the first union that I mentioned. I think, however, that having asked that question, I should follow it up, even if I do not pursue the others.

MR. VELDE. You may proceed.

MR. TAVENNER. Now were you expelled from local 46 of the International Brotherhood of Electrical Workers in 1948? (At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment.

MR. CLARDY. I suggest, Mr. Chairman, that he be directed to answer that question.

MR. VELDE. Certainly. You are directed to answer that question. The Chair can see no reason why the answer to such a question should incriminate you in any way— You are directed to answer the question.

MR. JACKINS. What the Chair can see, in the actual situation, need have no meeting ground at all, and again I repeat, considering the character of this committee and the nature of these hearings, I must decline to answer that question, claiming my privileges under the fifth amendment not to bear witness against myself in any attempt on the part of this committee to involve me.

MR. TAVENNER. Were you also expelled as business

agent of the Building Service Employees' Union some time prior to 1948?

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment to the Constitution not to bear witness against myself in any attempt on the part of this committee to involve me.

MR. CLARDY. Mr. Chairman.

MR. VELDE. Mr. Clardy.

MR. CLARDY. May I suggest that the witness be directed to answer that question?

MR. VELDE. Again, without objection, you are directed to answer that question.

MR. TAVENNER. Were you expelled from lodge 751—

MR. VELDE. Just a minute counsel.

MR. TAVENNER. Excuse me, sir.

MR. JACKINS. Where are we now?

MR. VELDE. Again you are directed to answer the last question. Again the Chair and the members of the committee see no reason why you could possibly be incriminated by an answer to that question. You are directed to answer the last question.

MR. JACKINS. The same answer as I gave to the previous question for the reasons that I previously stated.

MR. TAVENNER. Were you at any time expelled from lodge 751 of the Aero Mechanics Union?

MR. JACKINS. The same answer which I gave to the previous questions and for the reasons which I stated.

MR. CLARDY. Mr. Chairman.

MR. VELDE. Mr. Clardy.

MR. CLARDY. I ask that he be directed to answer.

MR. VELDE. Again you are directed to answer the question.

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I decline to answer, invoking my privileges under the fifth amendment of the Constitution not to bear witness against myself in any attempt on the part of this committee to involve me.

MR. SCHERER. Mr. Chairman.

MR. VELDE. Mr. Scherer.

MR. SCHERER. Witness, isn't it a fact that you were expelled from all three of these unions because of your Communist Party activities within the unions? Isn't that a fact?

MR. JACKINS. Considering the nature of this committee and the character of these hearings, I must decline to answer that question and for the same reasons.

MR. SCHERER. Were you on the Communist Party payroll?

MR. JACKINS. The same answer as to the previous question and for the same reason.

MR. SCHERER. Isn't it a fact that you have refused to answer the question as to your previous employment because you were on the payroll of the Communist Party in this country during those years? (At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. The use of my privileges under the fifth amendment does not in any sense imply that any of your statements are fact. I am invoking my privileges and declining to answer that question under the fifth amendment in order not to bear witness against myself in any attempt on the part of this committee to involve me.

MR. SCHERER. Witness, tell me what part of the

statements I have just made are false then?

MR. JACKINS. I decline to answer that question and for the same reasons.

MR. SCHERER. I thought you would.

MR. JACKINS. You were correct.

MR. CLARDY. May I ask a question, Mr. Chairman?

MR. VELDE. Mr. Clardy.

MR. CLARDY. Was there any reason, other than that cited by Mr. Scherer, for your expulsion from those three unions?

MR. JACKINS. Well, again I would like to draw your attention to the fact that the use of the fifth amendment and my privileges under the fifth amendment does not construe any guilt on my part or the accuracy of any of the statements made by members of this committee. I decline to answer for the reasons previously stated.

MR. CLARDY. Did you ever engage in any espionage activities?

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I must decline to answer, invoking my privileges under the fifth amendment.

MR. CLARDY. Then you won't even answer a question as to whether or not you have engaged in any espionage activities; is that correct?

MR. JACKINS. Considering the nature of this committee and the character of these hearings, I must decline to answer, invoking my privileges under the fifth amendment.

MR. JACKSON. Would a true answer to the question as to whether or not you have ever engaged in espionage activities tend to incriminate you?

MR. JACKINS. To use the fifth amendment and my privileges under it does not in any way imply incrimination.

MR. JACKSON. We understand the provisions of the fifth amendment very well.

The question is, "Would a truthful answer to the question of whether or not you have ever committed espionage tend to incriminate you?"

MR. JACKINS. Because of the nature of this committee and the character of these hearings, I must decline to answer that question, invoking my privileges under the fifth amendment not to bear witness against myself in any attempt of this committee to involve me.

MR. DOYLE. Mr. Chairman.

MR. VELDE. The Chair recognizes the gentleman from California, Mr. Doyle.

MR. DOYLE. My question does not involve the Communist Party. I notice that you said that between 1937 and 1950 you did not render any military service to your own United States Government. Were you excused during those years for any reason from military service, or why didn't you serve? Would that incriminate you, too, if you told the truth in that regard?

MR. JACKINS. Mr. Congressman, I feel that you are trying to bait me on that, but I will try to answer it, if you wish.

MR. DOYLE. I asked it in the hope that you would answer it.

MR. JACKINS. The technical reasons involved in my being excused from military service, I assume you would have to refer to the draft boards to get down accurately. To the best of my knowledge, I was excused from military service during those years for three reasons, in series: the first a question of health—that my service was postponed for a year because of a physical examination which turned up certain health conditions of which I was not previously aware; that again my service

in the Armed Forces was deferred because of a critical emergency involving the repair of fighting ships, where my skill was badly needed at the particular time; and, finally, I was deferred because I was regarded as too old at the expiration of that period.

MR. DOYLE. What draft board excused you for each or any of those reasons? You have your draft card in your pocket, haven't you?

MR. JACKINS. I am unable to give you that information at this time.

MR. DOYLE. Do you have your draft card in your pocket? If you don't, I submit that you ought to have it.

MR. JACKINS. I would have to search through my wallet to see whether I have it with me or not. I have no notion.

MR. DOYLE. What was the number of your draft board and where was it?

MR. JACKINS. I don't remember it—not at this time.

MR. DOYLE. What city was it in?

MR. JACKINS. It was in Seattle.

MR. DOYLE. Under what name did you register for military service?

MR. JACKINS. Under the name which I have given this committee.

MR. DOYLE. How old were you when you registered?

MR. JACKINS. If you can refresh my memory as to the date of the first draft registration, I can tell you.

MR. DOYLE. You don't remember?

MR. JACKINS. It would be not necessarily accurate.

MR. DOYLE. Approximately.

MR. JACKINS. I am told that the first draft registration was in October of 1940.

MR. JACKINS. I would be at that time then approximately 24 years of age.

MR. DOYLE. May I ask one more question, Mr. Chairman?

MR. VELDE. Mr. Doyle.

MR. DOYLE. Every time you pleaded the fifth amendment, I noticed you said "because of the character of this committee." I don't know whether you have a speech ready to make or not—I presume you do—but this committee is composed of Members of your United States Congress. Now do I understand that, because we are Members of the United States Congress and a committee of your Congress, there is something about the character of this committee that you have no respect for or trust in or confidence in? Is that your answer? I assume that that is the basis of your answer. You say "because of the character of this committee," and each one of us is a Member of your United States Congress, comprising a sort of cross-section of the United States Congress, so I assume when you use that language time after time that you are objecting to your United States Congress functioning as we have been authorized to function by the Congress.

MR. JACKINS. Mr. Congressman——

MR. DOYLE. Is that correct?

MR. JACKINS. I think there is a considerable difference between respect for an office and respect for the uses to which it is sometimes put.

MR. DOYLE. Of course the Congress, your Congress, created this committee.

MR. CLARDY. I think you ought to point out that the members were elected unanimously by the Congress to this committee.

MR. VELDE. Not only that, but we should also remind the witness that in this last session of Con-

gress when our appropriations came up before the Congress, they were approved with only one dissenting vote. So that this is a representative body of the people of the United States, who elected the Congress.

MR. JACKINS. Which would not, in itself, establish the character of this committee nor the role which it plays.

MR. JACKSON. The character of this committee and the role which it plays had been established long before the vote to which the chairman refers. In other words, sir, 362 to 1 means that the people of the United States are speaking through their Congress, through this committee, asking people like you to cooperate with the committee, giving us the benefit, giving the Congress the benefit, and giving the American people the benefit of anything you may know about the Communist conspiracy. That you have failed to do completely, and mere words about the character and the motives of this committee isn't going to change the fact that the American people have elected their Congress which in turn established this committee.

MR. JACKINS. Nor would it necessarily indicate the judgment of the people on the work of this committee.

MR. JACKSON. The judgment of the people has already been passed in their vote of their elected representatives.

MR. JACKINS. It will be passed again.

MR. JACKSON. It will be passed again comes the revolution?

MR. JACKINS. I believe that the judgment of the people on committees such as this is being passed, in a large measure, by them being shown to television audiences throughout the country.

- MR. JACKSON. We are talking about this committee, sir, and not any other committee, and the work of this committee will be reflected in the response and the reactions we receive from the people of Seattle and the Northwest area which, if it follows the course of other reactions, will be overwhelmingly favorable.
- MR. JACKINS. If Mr. Doyle has an honest question as to why I raised that question, I think I can——
- MR. CLARDY. Mr. Chairman, the witness has no business insulting Mr. Doyle or the Congress by using the language that he has, and I ask that it be stricken.
- MR. JACKINS. I meant no insult to Mr. Doyle.
- MR. VELDE. I am sure that Mr. Doyle would not ask any dishonest question whatsoever. Do you want to repeat the question, Mr. Doyle?
- MR. DOYLE. I think the witness remembers my question quite clearly. I am sure he remembers it. I don't think, in view of your heavy load of witnesses, that I care to take more time.
- MR. JACKINS. Mr. Doyle——
- MR. DOYLE. May I say this to you, though, young man? I am very much disappointed in you that, as a young American, you take the position you do. You evidently have leadership ability; you have evidently been a leader in labor; you evidently have been blessed by your country, and I hope that you will reverse your opinion.
- MR. JACKINS. You need not be disappointed in me, sir, and I think I could easily explain to you why, but not under conditions such as this.
- MR. JACKSON. Mr. Chairman.
- MR. VELDE. Mr. Jackson.
- MR. JACKSON. We have already taken up, I understand, 40 minutes of time with this witness, with

many witnesses still to be heard. I would very respectfully suggest the regular order.

MR. VELDE. The Chair certainly concurs with the gentleman from California.

Mr. Counsel, do you have any further questions to ask of this witness?

MR. TAVENNER. May I ask the witness one further question?

MR. VELDE. Proceed.

MR. TAVENNER. I think I should advise the witness that there has been heard in executive session before this committee the witness Elizabeth Boggs Cohen and the witness Leonard Basil Wildman, both of whom were heard on May 28, 1954, and both of whom identified you as at one time having been an active member of the Communist Party, Mr. Wildman having identified you as the organizer of a branch of the Communist Party while you were in attendance at the University of Washington.

This is your opportunity, if you desire to take advantage of it, of denying those statements, if there is anything about them which is untrue.

MR. JACKINS. Is that a question?

MR. TAVENNER. Yes. Do you desire to deny any part of that identification?

MR. JACKINS. Considering the character of this committee and the nature of these hearings, I must decline to answer that question, calling upon my privileges under the fifth amendment to not bear witness against myself in any attempts of this committee to involve me.

MR. TAVENNER. Have you ever been a member of the Communist Party?

MR. JACKINS. The same answer as before for the same reasons.

MR. TAVENNER. I have no further questions, Mr. Chairman.

MR. VELDE. Mr. Jackson?

MR. JACKSON. No questions.

MR. VELDE. Mr. Clardy?

MR. CLARDY. Witness, you told us that at present you were engaged in an occupation that I didn't quite understand. What is it that you are doing at the moment?

MR. JACKINS. I am engaged in the work of personal counseling.

MR. CLARDY. What do you mean by personal counseling? That is what I do not understand.

MR. JACKINS. I work with individuals to help them with their personal problems.

MR. CLARDY. What kind of personal problems?

MR. JACKINS. With their emotional difficulties, with the inhibitions which keep them from functioning well as individuals.

MR. CLARDY. Are you a medical expert or a psychiatrist of some kind?

MR. JACKINS. Not at all. The approach is quite different than either of those fields.

MR. CLARDY. Do you belong to some profession of some sort that is licensed by the State to engage in this kind of activity, or is this something that you have invented yourself?

I am serious about this. I want to know, because I don't understand.

MR. JACKINS. May I have a little latitude in explaining it, sir?

MR. CLARDY. I haven't limited you.

MR. JACKINS. Fine. I am working with a very new approach to the problem of individual human

beings. We have discovered, a group of us, that apparently anything wrong with an individual human—any limitation on his ability, his enjoyment of life, his ability to be intelligent in any situation—is purely and solely the result of the experiences of hurt which he has endured, including emotional distress, quite as important as experiences of physical pain; that anything less than rational or able about an individual human being can be traced as the literal expression of experiences when he has been hurt, beginning very early and accumulating, and that it is possible in a teamwork relationship for one person's intelligence as a counselor to be linked with that of the person who is enduring the difficulty or the limitation or the emotional problem—to go back in memory, in effect and, by repetitively seeking out these experiences of hurt, discharging the stored up painful emotion; and in assisting the person to think them through over and over and over again, it is possible to free an individual from the inhibiting effects of the distresses which have stored up on him during his life.

Now this is a very exciting field; the possibilities implicit in it—and we are pioneering in the group with which I work—are amazing.

MR. CLARDY. What do you mean by "we"? Is this something originated by the Communist Party as part of its program?

MR. JACKINS. Considering the character of the committee and the nature of these hearings, I must decline to answer that question, calling upon my privileges under the fifth amendment to not bear witness against myself in any attempt of this committee to involve me.

MR. CLARDY. Mr. Chairman, I ask that he be directed to answer.

MR. VELDE. Just a moment, Mr. Clardy.

May I again direct the physical audience that are present here that the committee cannot operate as it should under the duties it has with any disturbances of either expressions of approval or disapproval, and the chair and the committee would appreciate it if the physical audience present would not laugh or make any demonstrations whatsoever, either of disapproval or of approval.

MR. CLARDY. Now, Mr. Chairman, would you direct him to answer the last question?

MR. VELDE. Will the reporter read the question, please?

(Question read.)

MR. CLARDY. I ask that he be directed to answer that question.

MR. VELDE. Yes; the Chair directs you to answer that question. Is it part of the Communist Party program?

MR. JACKINS. I must decline to answer that question for the reasons previously stated.

MR. CLARDY. Who are the other people, then, when you use that word "we," that are associated with you in this movement?

(At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. Under the conditions of this hearing and considering the nature of the committee, I must decline to answer that question.

MR. CLARDY. I think I should caution you, Witness, that you do not have to decline to answer anything. I am assuming when you say you must that you mean you are. Am I correct?

MR. JACKINS. Certainly.

MR. CLARDY. You have been saying "I must decline."

MR. JACKINS. For the reasons stated, sir.

MR. CLARDY. Very well. Are those that you asso-

ciate with the persons that have been identified in this proceeding as members of the Communist Party?

MR. JACKINS. I decline to answer the question for the reasons previously given.

MR. CLARDY. Have you ever been a member of any organization whose avowed purpose is the overthrow of this Government through the use of force and violence?

MR. JACKINS. Under the conditions of this hearing and considering the nature of the committee, I must decline to answer that question, invoking my privileges under the fifth amendment not to bear witness against myself.

MR. CLARDY. Very well. One final question. Will you give us the names of the persons you are associated with in this activity that you have described?

MR. JACKINS. I must decline to answer for the reasons previously given.

MR. CLARDY. Mr. Chairman, I ask that he be directed to answer.

MR. VELDE. Yes; the chairman directs you to answer that last question.

MR. JACKINS. I decline to answer the question for the reasons previously given.

MR. CLARDY. That is all I have.

MR. VELDE. Mr. Scherer.

MR. SCHERER. No questions.

MR. VELDE. Mr. Doyle?

MR. DOYLE. I have two questions.

You are the one that volunteered that your present occupation was working with a group, and in my book that is a waiver of your privilege under the fifth amendment.

But what is the name of the group?

(At this point Mr. Jackins conferred with Mr. Caughlan.)

MR. JACKINS. Sir, I believe that the committee has sought to involve me in a trap on this question. Were I to decline to answer the question, certainly it is conceivable that I will be threatened with contempt charges, but, on the other hand, to answer it would lead to all sorts of other involvements, as I have tried to explain previously; so that in the circumstances, I have no choice but to decline to answer the question, invoking my privileges under the fifth amendment not to bear witness against myself.

MR. CLARDY. Mr. Doyle, I think you should ask the Chair to direct him to answer it, because I think this is clearly beyond the pale.

MR. DOYLE. I ask that the chairman direct the witness to answer that question.

MR. VELDE. Certainly. There is no possible way that you can incriminate yourself by an answer to that question. You are directed to answer the question, Mr. Witness.

MR. JACKINS. I decline to answer it for the reasons previously stated.

MR. DOYLE. I have two more questions.

Does this office have an address here in Seattle? Do you work with a group in an office in some building? If so, where is that office?

MR. VELDE. May I suggest, Mr. Doyle, that you ask one question at a time.

Would you ask him the first question again?

MR. DOYLE. Yes.

You volunteered that you were working with a group. Does that group have an office in Seattle?

MR. JACKINS. I work in an office in Seattle.

MR. DOYLE. Does the group that you referred to have an office, with you in that same office that you work in?

MR. JACKINS. I decline to answer that question for the reasons previously stated.

MR. DOYLE. Do you have a business card on you, a professional card that you use for identification of your work as a professional adviser? If you have, will you please present me with one or present the counsel with one for identification?

MR. VELDE. I respectfully suggest that you ask him whether or not he has such a card.

MR. JACKINS. To my knowledge, I have no card with me.

MR. DOYLE. If you have one on you, would you please give it to us? You carry a business card or a professional card, don't you?
Why don't you answer honestly on that?

MR. JACKINS. I said I do not have one with me, to my knowledge.

MR. DOYLE. Do you sell your services for a fee, a professional fee? Do you collect a fee for professional advice you give?

MR. JACKINS. I decline to answer that question.

MR. DOYLE. Is there a membership fee paid to the group that you claim to be a member of?

MR. JACKINS. I decline to answer that question for the reasons previously stated.

MR. VELDE. Mr. Frazier.

MR. FRAZIER. No questions.

MR. VELDE. Is there any reason why this witness should not be dismissed?

MR. TAVENNER. No, sir.

MR. VELDE. Very well. The witness is dismissed.

MR. JACKINS. May I ask, am I dismissed for the duration of these hearings?

MR. VELDE. You are dismissed.

MR. CAUGHLAN. Can he be excused from the hearing room and not return at all?

MR. TAVENNER. Yes, you are dismissed.
(Witness was excused.)

MR. VELDE. Call your next witness.